

Remarks

Claims 1-5 and 7-18 are pending with entry of this Amendment and stand rejected.

Independent Claims 1, 17 and 18 have been amended with the entry of this Amendment.

Rejection under 35 U.S.C. § 112

At paragraph 1 of the Action, the Office rejected Claims 1, 17 and 18 under 35 U.S.C. §112, first paragraph as allegedly failing to comply with the written description requirement. Specifically, the Office alleges that a mobile unit in “voice communication” with a cell site is new matter. Applicant does not understand the grounds of this rejection especially in view of the Office’s apparent admission that “it can be implied that a voice call takes place, since we are dealing with a cellular system” (emphasis removed). Certainly active communication between a mobile unit and a cell site may be voice *and/or* signaling/control communication. Therefore, the Office’s new matter rejection is, by definition, improper. To further prosecution in this matter, however, Applicant has amended Claims 1, 17 and 18 for clarification purposes only. Withdrawal of the Section 112 rejection is respectfully solicited.

The Section 103 Rejections

1. The Office ignored the clear teaching of the primary reference Agostino and the plain language of the independent claims in maintaining the rejection and imported claim limitations from the specification.

On page 3 of the Action, the Office stated the following:

“the applicant has pointed out where the invention do [sic] not refer to a “drive test”; however, the examiner would like to point out where paragraph 11 of the published present application reads: “subscribers. However, specialized test units can be used as the mobile unit in the present invention...”; therefore, the art used for the rejections utilize “test units”, therefore, the prior art of record still applies.

See page 2, subpara. b) of the Action. This is an admission by the Office that the plain language in the claims was not examined. For this reason at least, Applicant

respectfully requests reconsideration and withdrawal of the rejection or in the alternative, Applicant respectfully requests withdrawal of the finality of the instant Action.

Further, the Office incorrectly analyzed Applicant's specification and *imported the language of the specification into Applicant's claims* from paragraph [0011] to maintain the rejection. This is against precedential law and the guidelines provided in the MPEP. *See* MPEP 2111.01 (II). For example, the first element of Claim 1 recites:

gathering signal strength data of received uplink signals of subscriber mobile units as measured and collected by a cell site, the mobile units being in active communication with the cell site and using an active communications channel of the wireless system

(emphasis supplied). As is clear from the plain language of Claim 1, this signal strength data is from the uplink signals from the mobile unit to a cell site. Further, this signal strength data is collected and measured by the cell site as claimed. Therefore, the assertion of the Office that since the art utilizes "test units" this reads on the claim language is factually incorrect and finds no support in either Applicant's claim language or Applicant's specification.

To the contrary, not only is Applicant's claim language clear on this point as discussed above, but Applicant's specification is equally clear. For example, in paragraph [0018] of Applicant's specification, Applicant explicitly describes that the collection of data from mobile units in use in the system reduces or eliminates the need for drive testing by performing system analysis based upon the enhanced collection of data already existing within the system. As the Office is surely aware, drive testing, as disclosed in Agostino and acknowledged in Applicant's specification relies upon the collection of downlink data (*see* paragraph [0018] of Applicant's specification and Col. 3, ll. 56-66 of Agostino). That is, downlink data is the data transmitted from a cell site or base station to the mobile unit, or in the case of Agostino, a mobile diagnostic unit (MDU) connected to one or more mobile units (MU). This MDU and the connected MUs

do not collect and measure signal strength data transmitted by the MUs. Rather, Agostino employs a mobile telephone exchange (MTE) to *periodically* record reverse link (uplink) data. *See* Col. 3, line 67 – Col. 4, line 1. Therefore, for clarification purposes only, Applicant has amended independent Claims 1, 17 and 18 to traverse any rejection premised upon Agostino.

In view of Applicant amendment, it is clear that because data from mobile units can be updated in real time as the system is in use, the implementation of the claimed subject matter allows for dynamic optimization of a wireless system. In contrast to Agostino, dynamic optimization addresses system propagation issues on a wider range of scales than a *periodic* optimization disclosed in Agostino. *See Id.* Applicant submits that as the primary reference Agostino relies upon drive testing and mobile data collection equipment, Agostino cannot properly be utilized under 35 U.S.C. §103(a) in a rejection of Applicant's claimed subject matter. Reconsideration and withdrawal of the rejection of Claims 1, 17 and 18 are respectfully solicited. As Claim 1 is in condition for allowance and Claims 2-5 and 7-16 depend therefrom, Applicant submits Claims 2-5 and 7-16 are allowable by virtue of their dependency alone without addressing the additional patentable subject matter therein. Reconsideration and withdrawal of the rejection of Claims 2-5 and 7-16 are respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and a notice to this effect is respectfully requested.

The Office is requested and hereby authorized to charge any required extension-of-time fees against Deposit Account Number 04-1679 to Duane Morris LLP.

If any point remains that is deemed best resolved through a telephonic conversation, the Office is hereby requested to contact the undersigned directly.

Respectfully submitted,

/mcc/

Mark C. Comtois Reg. No. 46,285

DUANE MORRIS LLP
505 9th Street N.W., Suite 1000
Washington, D.C. 20004
Telephone: (202) 776-7800
Telecopier: (202) 776-7801

Dated: February 23, 2009